

## Chemical Risk Task Force (CRTF)

### Issue

There are many agencies having some form of jurisdiction over the activities which, collectively, are intended to identify, limit and manage the full range of risks arising from chemical activities. In general, disasters which are centered on a chemical point source arise from three root causes: natural events such as floods or storms; technical failures such as fires, explosions or vessel failures; and intentional acts such as terrorism or sabotage. Consequences of such disasters can include human effects inside the property of the chemical source point, the local population near the source point, another population, the environment, the functioning of the economy and other infrastructure effects, and a psychological effect. These causes of chemical disaster and the effects of chemical disaster are broad, and there is no single federal, state or local agency with a clear mandate to engage in “all hazards” risk management oversight.

There are, however, certain agencies and authorities that address some key area of chemical risk management. At the federal level, the Environmental Protection Agency (EPA), The Department of Homeland Security (DHS) and the Occupational Health and Safety Administration (OSHA) all have key roles.

**The Department of Homeland Security** has several components engaged in chemical risk management, all from the security point of view. The DHS range of authorities and programs addressing the third “root cause” (intentional acts) includes (in addition to others) the:

- Chemical Facility Anti-Terrorism Standard (CFATS) addressing chemical security risk at fixed, non-port facilities, and implemented by the National Protection and Programs Directorate (NPPD)
- Maritime Transportation Security Act (MTSA) addressing chemical security risk at fixed port facilities, and implemented by the US Coast Guard (USCG)
- Rail Security Act (RSA) addressing chemical security risk of transportation containers (of chemicals) in the nation’s rail system

**The Environmental Protection Agency** has authority to provide oversight to industry in both preventing many types of chemical disaster, and for preparing adequate response to unplanned events. EPA has heretofore focused on chemical hazards arising from a release of a chemical into the atmosphere – a common but not universal proximate cause of chemical disaster. EPA is not, however, strictly limited to that sub-set of chemical risk.

**The Occupational Safety and Health Administration** has authority to provide oversight to industry in both preventing many types of accidents and disasters, and for preparing adequate response to unplanned events. OSHA is focused on consequences to a facility’s workers, and so extends into areas that in federal deliberations might be considered below the “disaster” threshold. OSHA does have more organizational experience with programs addressing a wider range of hazards.

Accordingly, we recommend that these three agencies – EPA, OSHA and DHS, co-lead a Task Force for the evaluation and coordination of federal authorities in developing improvements to federal oversight of “all hazards” relative to chemical risk. DHS should determine which component would be a co-chair and identify other component members.

Several other federal agencies have related authorities/capabilities in providing oversight to industry in the reduction and management of chemical risk. These include, but are not limited to:

- Department of Transportation – Pipeline Hazards & Materials Safety Administration (DOT –PHMSA)
- Department of Justice – Federal Bureau of Investigation (WMD) (FBI – WMD)
- Department of Justice –Bureau of Alcohol Tobacco Firearms and Explosives (BATF)
- Department of Energy – Office of Energy Assurance (DOE)

Additional members might include the Drug Enforcement Administration, the Food and Drug Administration, or others.

### **Initial Work – Defining the Challenge and Outlining a Solution**

The CRTF is created to orchestrate and focus the efforts of multiple federal agencies in responding to the West Fertilizer disaster.

Initial order of business would be to identify all federal authorities pertaining to chemical operations, and to evaluate the completeness (or lack) of federal oversight for a full range of chemical hazards, including the full range of causality, consequence and location/activity type.

This assessment would then be referenced to a “typical” complimentary state/local regulatory and oversight environment, and the CRTF would draw initial conclusions regarding gaps in oversight.

This assessment would be the first deliverable, to the senior staffs of the Member Agencies and to the authorizing staff of the EOP. This deliverable might also be shared with bodies representing:

- governors of the states and leaders of local governments
- chemical process industries
- the public.

This deliverable – (1) - could be ready in as little as 30 – 45 days if the CRTF is established quickly.

The CRTF would then begin work in two tracks.

Track 1 – improving interagency coordination.

Some challenges to interagency cooperation are structural. For example:

DHS may be limited in its ability to share information with partners who are not a part of the national security and intelligence apparatus. Similarly, EPA is restricted by law against (widely) sharing certain portions of its analysis of chemical facility risk.

Different agencies have databases that are structured in ways that are not always technically compatible. Since some of these databases are massive (EPA’s RMP database, DHS’ Top Screen database) working across databases can be very challenging in a technical sense. These issues will have to be addressed. Nonetheless there is much opportunity in integrating these diverse data sources into a meaningful and holistic data set.

The initial assessment described above will (most likely) be imperfect, and over a little time, refinements and improvements will be required. For example, agencies will likely need some time to fully integrate the effects of exemptions (from their authorities) on the analysis. The CRTF will need to work on continuously improving the original analysis.

The second deliverable – (2) - will be a Proposed Memorandum of Understanding among the several participating (Member) agencies, laying improvements to 988sharing, coordination and cooperation. Assuming neither the legal nor technical challenges prove insurmountable, this deliverable should be ready in three to four months.

#### Track 2 – Develop Recommendations

The second track will be to work the analysis through a problem-solving process, engaging member agencies and local/state partners, as well as external stakeholders, in identifying potential changes to risk reduction and risk management oversight.

The deliverable would be a set of recommendations designed to address gaps in oversight – with certain types of recommendations being highlighted. These would include improvements that can be accomplished:

- Immediately or nearly immediately, with little or no rule-making
- At little or no cost to the government
- At little or no cost for administrative processes to industry
- With minimal risk of legal challenge

This deliverable – (3) - could be ready in as little as three months following completion of (1) above.

#### Concept of Operation

The CRTF will require a small budgetary support commitment by each component. That fund should be administered by the Chief Financial Officer of one of the three Lead Agencies.

By the end of FY14 the CRTF should successfully:

- Establish its own working protocols
- Determine a long-term resource needs and submit same to the concerned Agencies
- Establish a time line and milestones for the establishment of specific programs to implement the recommendations made in (3) above and approved by the Agencies and EOP, which may be prioritized
- Establish a firm accounting of available assets – that is, the number of personnel and amount and types of equipment that may be available either from the Agencies or by expenditure of CRTF budget for application to the work
- Determine what, if any structural modifications will be necessary within agencies for long term support the CRTF
- Provide outreach and education to Agency leadership, the private sector and the response community in order to facilitate further development of the CRTF approach
- Develop a plan for the long term management and sharing of records and data, and the analysis of same

We recommend the CRTF Executive Secretariat will be provided by the Department of Homeland Security, simply in acknowledgement of that Agency's size and resources.

We recommend an Attorney Advisor be detailed to this effort by the Department of Labor, simply in acknowledgement of their traditionally broader authority in terms of type of risk

The intent of this work is to accomplish several improvements. The CRTF can help to ensure the Federal and State governments are evaluating the risk reduction and disaster prevention measures and plans of the highest risk facilities, regardless of the specific source point or that risk. The Government and the private sector may find

opportunities to operate more efficiently. At a minimum, the various agencies engaged in chemical risk reduction and management will be brought into an extended dialogue and examination of the full range of programs aimed at chemical risk in the United States. That expended dialogue may yet yield untold benefits.